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February 11, 2015

**ATTORNEY GENERAL COPY: CONTAINS OFFICIAL  
INFORMATION PER EVIDENCE CODE § 1040**

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE § 25249.5 ET SEQ.**

Dear Public Enforcement Agencies:

Shute, Mihaly & Weinberger LLP ("Firm") represents As You Sow ("AYS"), a 501(c)(3) non-profit corporation dedicated to, among other causes, the protection of the environment, toxics reduction, the promotion of and improvement of human health, the improvement of worker and consumer rights, environmental education, and corporate accountability. AYS is based in Oakland, California, and was incorporated in 1992 under the laws of the State of California.

This Firm and AYS have documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986 ("Proposition 65"), codified at Health & Safety Code section 25249.5 et seq. This letter serves to provide this Firm's and AYS's notification of these violations to the public enforcement agencies. Pursuant to section 25249.7(d) of the statute, this Firm intends to bring an enforcement action on behalf of AYS sixty days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the notices served upon the violators. The specific details of the violations that are the subject of this notice are provided below.

**Alleged violators.** The name of the violators covered by this notice are:

- The Hershey Company
- Mars, Inc.
- See's Candies, Inc.

**Chemical.** These violations involve exposures to cadmium from each of the products listed below. The State of California has officially listed cadmium as a chemical known to cause birth defects or reproductive harm. *See* Chemicals Known to the State to Cause Cancer or Reproductive Toxicity, available at [http://oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://oehha.ca.gov/prop65/prop65_list/Newlist.html).

**Consumer products.** The products that are the subject of this notice are:

- Scharffen Berger Semisweet Fine Artisan Dark Chocolate (Bar) (62% Cacao), which is manufactured, distributed, and/or sold in California by the Hershey Company
- Scharffen Berger Extra Dark Fine Artisan Dark Chocolate (Bar) (82% Cacao), which is manufactured, distributed, and/or sold in California by the Hershey Company
- Dove Silky Smooth Dark Chocolate (Bar), which is manufactured, distributed, and/or sold in California by Mars, Inc.
- See's Candies Premium Extra Dark Chocolate 62% Cacao (Bar), which is manufactured, distributed, and/or sold in California by See's Candies, Inc.

**Route of exposure.** Use of the products identified in this notice result in human exposures to cadmium. The route of exposure is ingestion, when consumers consume these products as directed on their labels. No clear and reasonable warning is provided with the products regarding the reproductive hazards of cadmium.

**Duration of violation.** These ongoing violations have occurred on every day since at least February 11, 2014, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are removed from the products.

Pursuant to Title 11, Cal. Code Regs. section 3100, a certificate of merit is attached hereto.

In keeping with its public interest mission and to expeditiously rectify this ongoing violation of California law, AYS is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. You may communicate directly with AYS to discuss an early resolution of this matter by contacting Danielle Fugere, President, 1611 Telegraph Avenue, Suite 1450, Oakland, CA 94612, (510) 735-8158. You may also contact AYS's counsel:

Ellison Folk  
Shute, Mihaly & Weinberger LLP  
396 Hayes Street  
San Francisco, CA 94102  
Phone: 415.552.7272; Fax: 415.552.5816  
Email: folk@smwlaw.com

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Ellison Folk

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## CERTIFICATE OF MERIT

(for As You Sow's Notice of Proposition 65 Violation on The Hershey Company;  
Mars, Inc.; and See's Candies, Inc.)

I, Ellison Folk, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties in the notice have violated section 25249.6 of the Health and Safety Code by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General has attached to it to it factual information sufficient to establish the basis for this certificate, including the information identified in section 25249.7(h)(2) of the Health and Safety Code, i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: \_\_\_\_\_

2-10-2015

  
\_\_\_\_\_  
Ellison Folk

Enclosure (For Attorney General Copy only)

## CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action. My business address is: 396 Hayes Street, San Francisco, CA 94102.

On February 11, 2015, I served the following documents:

- Notice of Violation of California Health & Safety Code section 25249.5 et seq.
- Certificate of Merit
- "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary"

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

John P. Bilbrey  
President  
The Hershey Company  
100 Crystal A Drive  
Hershey, PA 17033

Grant F. Reid  
President  
Mars, Inc.  
6885 Elm Street  
McLean, VA 22101

Bradley D. Kinstler  
President  
See's Candies, Inc.  
210 El Camino Real  
South San Francisco, CA 94080

On February 11, 2015, I served the following documents:

- Notice of Violation of California Health & Safety Code section 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

on the Attorney General of the State of California by electronic service of the Attorney General's Proposition 65 60 Day Notice Filing system.

On February 11, 2015, I served the following documents:

- Notice of Violation of California Health & Safety Code section 25249.5 et seq.
- Certificate of Merit

on each of the parties on the service list attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto, and depositing it at United States Postal Service mail box for delivery by First Class Mail.

Executed on February 11, 2015, at San Francisco, California.



Patricia Larkin

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